

As stated in the Office Action 35 U.S.C. §102(b) states: "a person shall be entitled to a patent ... (b) unless the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country more than one year prior to the date of application of patent in the United States."

The instant continuation application was filed on August 11, 2000. This application properly claims the benefit of Application Serial No. 08/864,138 filed on May 28, 1997. Thus the application has an effective filing date of May 28, 1997. The patent to Waalkes issued on May 4, 1999 from an application Serial No. 08/856,995 filed on May 15, 1997. Because of the benefit of the earlier filing date, this application cannot be properly be rejected under 35 U.S.C. § 102(b) and/or Waalkes. Several phone calls have been made by the undersigned to the examiner of record, Mr. Chi Q. Nguyen. Examiner Nguyen had stated that this incorrect grounds for rejection would be corrected in a new Office Action to be mailed to the applicant. However, no such new Office Action has been received.

Since the reference cited by the Examiner is not properly a reference under §102(b) based on the original filing date of applicant's parent application, it is respectfully submitted that the independent claims are allowable over the remaining prior art of record, all the claims dependent thereon are also allowable. Thus a favorable action allowing the application is respectfully requested.

In the event that the Examiner asserts new grounds for rejection of the application, it is requested that a new Office Action stating the grounds and reasons therefore be submitted along with removal of the final rejection of this application.

If the Examiner is of the opinion that a telephone conference would expedite allowance and issuance of this application, he is requested to call the undersigned at the number below.

Respectfully submitted,



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Dated:

1/22/02

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